UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
CHICAGO DIVISION

FILED
FEB 14 2017
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

KELLY RUCKER, an individual,

Plaintiff,

v.

HELENKAY DIMON, an individual,
SAMHAIN PUBLISHING, LTD. a Ohio corporation,

Defendants.

17CV1172
JUDGE GUZMAN
MAG. JUDGE VALDEZ

o. ________

Jury Trial Demanded

PLAINTIFF'S AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff Kelly D. Rucker ("Plaintiff") hereby files this Complaint against HelenKay Dimon ("Defendant Dimon"), and Samhain Publishing, LTD. ("Samhain" or "Defendant Samhain"). In support of this Complaint, Plaintiff states the following:

NATURE OF ACTION

1. Plaintiff brings this action to obtain legal and equitable relief to remedy Defendants' infringement of Plaintiff's exclusive rights under the Copyright Act by the unlawful reproduction, publication, distribution, and/or licensing of the infringing book entitled "Baby It's Cold Outside" ("the Infringing Work").

JURISDICTION AND VENUE

2. This action arises under 17 U.S.C. §§ 101 et seq. (the "Copyright Act"). This Court has exclusive subject matter jurisdiction over copyright infringement claims under 28 U.S.C. §§ 1331 and 1338. Plaintiff is the author of an original literary work entitled "*Queen of Hart's*" ("the Original Work"). Plaintiff has a copyright registered for the Original Work.
3. This Court has specific personal jurisdiction over Defendants because they have engaged in acts in this District and/or have engaged in tortious acts outside Illinois knowing and intending that such acts would interfere with Illinois interests and cause injury within Illinois. Specifically, Defendants have, based on information and belief, unlawfully licensed and/or distributed Plaintiff's copyrighted material to Illinois persons and

businesses, or unlawfully licensed and/or distributed Plaintiff's copyrighted material to persons or businesses outside of Illinois with the knowledge that such unlawful material would be sold to Illinois persons or businesses.

4. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. § 1391.

PARTIES

5. Plaintiff is an individual and resident of Chicago, Cook County, Illinois.

6. Defendant HelenKay Dimon an individual is located at 4413 Aragon Drive San Diego CA 92115.

7. Defendant Samhain is a Ohio corporation with a principal place of business located at 11821 Mason Montgomery Road, Suite 4B in Cincinnati, OH 45249.

BACKGROUND FACTS

8. Plaintiff is an author of women's fiction. In early summer 2010, she began writing a romance novel entitled, "Queen of Hart's." By September of 2014, she completed the book, ("the Original Work").

9. In December 2013, Plaintiff submitted the Original Work via Amazon's self publishing platform at amazon.com.

10. Upon information and belief, author Defendant Dimon read the Original Work by purchasing or downloading a free version of the Original Work, or by virtue of a Samhain representative and/or other publishing representative, agent or author delivering or causing to be delivered the Original Work to her.

11. In 2014, Defendant Dimon published a book entitled, "Baby It's Cold Outside" ("the Infringing Work"). Since 2014, the Infringing Work has been sold on amazon.com, barnesandnoble.com, and other e-commerce websites and retail outlets throughout the United States, including in this District.

12. The Infringing Work has been financially successful and has received positive reviews and

acclaim. Indeed, the Infringing Work was a Bestseller on Amazon

13. Plaintiff first discovered the Infringing Work in March of 2014 when she purchased the Infringing Work from amazon.com. Plaintiff immediately noticed several similarities between the Infringing Work and the Original Work. These copied elements include specific characters, scenes, dialogue, and plot sequences—including the following:

> The heroine of the story is a twenty-six year old with dark brown eyes and long hair and long legs who wears monochrome suits at the workplace. She meets the hero of the story—a tall wealthy executive who constructs buildings of some type and who wears suits and "crisp" white dress shirts, possesses long fingers, has short cropped hair and eyes of an intense shade – and interviews for a job with him before working for him as an assistant. They begin a sexual relationship despite stated concerns by hero of human resources regulations concerning in office romances. The hero, who lives in a luxurious penthouse decorated with shades of black and white where he stares out the windows to the city, walks by heroine's desk to look at her in the office and also looks at her with longing in meetings. Hero mistakenly believes that heroine is in a relationship with another male who is her friend in the office, and heroine is also friends with a female in the office who she does not confide in about her relationship with hero. Hero and heroine have sex in the office and their relationship is ended when hero believes that heroine has stolen company information and given it to his competition by coming in to office after hours and working on a computer with this action captured on security cameras. Hero, under the mistaken impression that the heroine is a mole who has stolen from him, confronts confused heroine in the office and fires her despite her protests that she has done nothing wrong, with a security guard named Stan escorting her out. After their breakup, the hero is angry

and hard to get along with in the office, gets drunk and slides to the floor or eludes to it, and hero also sleeps on the floor at some point in story. Hero tries to date and have sex with other women but can only think about the heroine, and states that he does not want another woman. The heroine retreats to her parents' home after the breakup with hero, but the hero tracks her address down and comes to find her. When hero visits heroine's home he stands in hallway and demands that she open the door and there is stated concern about others overhearing their conversation. Hero and heroine have had to deal with an accidental pregnancy. Hero had a hard childhood with police involved that he shares with heroine, while heroine had loving parents. One of the major characters has a supportive sibling that is talked about but plays little role in the story. Heroine takes charge in a sexual situation with hero asking her to "tell me what you want". Hero discovers that heroine's friend who also worked in the office is the true culprit who used heroine's information to steal the company information that he had accused heroine of stealing. Hero begs heroine for forgiveness for his mistaken thoughts about heroine stealing company information and hero and heroine admit they love each other and are having a baby at the end of the story.

14. Plaintiff has never given any of the Defendants permission to exercise any of her exclusive rights to the Original Work granted under the Copyright Act.

15. Even though Plaintiff has given Defendants written notice of Defendants' unlawful infringement, Defendants continue to violate her rights under the Copyright Act.

COUNT I
(Copyright Infringement)

16. Plaintiff repeats and realleges the allegations contained in paragraphs 1-15 as if set forth in full.

17. Plaintiff is the author and copyright owner of the Original Work and all derivative works thereof.

18. Without Plaintiff's authorization, Defendant Dimon copied protectable elements of expression from the Original Work and used these protectable elements of expression in the Infringing Work.

19. Without Plaintiff's authorization, Defendant Dimon, and Defendant Samhain (collectively, "Defendants") reproduced and distributed (and continue to reproduce and distribute) the Infringing Work in violation of 17 U.S.C. § 501.

20. Defendants' acts have irreparably damaged Plaintiff and, unless enjoined, will continue to irreparably damage Plaintiff. Plaintiff has no adequate remedy at law for these wrongs and injuries. Plaintiff is therefore entitled to a permanent injunction restraining and enjoining Defendants and their employees, agents, servants, attorneys, and all persons acting in concert with it from infringing Plaintiff's copyright.

21. Defendants knew or should have known that the Infringing Work copied protectable elements of expression from the Original; therefore, Defendants willfully infringed Plaintiff's copyrighted work.

22. As a direct and proximate result of the foregoing acts of infringement, Plaintiff has suffered damages, including loss profits and is entitled to recover all damages sustained as a result of Defendants' unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter Judgment and Award to Plaintiff:

(a) Defendants' profits and damages in such an amount to be found;

(b) A permanent injunction restraining and enjoining Defendants and their employees, agents, servants, attorneys, customers, and all persons acting in concert with them from, (i) directly or indirectly infringing in any manner Plaintiff's copyright or any other exclusive right; (ii) participating in, causing, contributing to, or facilitating in any way the infringement of Plaintiff's copyright;

(c) Pre and post-judgment interest at the maximum amount permitted by law; and

(d) An award to Plaintiff of such other and further relief that this Court determines at law or in equity, including but not limited to Plaintiff's attorneys' fees and costs, that is just and proper.

COUNT II
(Contributory Copyright Infringement)

23. Plaintiff repeats and realleges the allegations contained in paragraphs 1-22 as if set forth in full.

24. Defendant Dimon represented to third parties, including but not limited to Samhain, that she owned full rights to the Infringing Work when she knew or should have known that the Infringing Work contained unauthorized copyrightable expression from the Original Work.

25. By unlawfully licensing the Infringing Work to third parties such as Samhain, Defendant Dimon knowingly induced and caused (and continues to knowingly induce and cause) such third parties to unlawfully reproduce and distribute the Infringing Work and has received royalties from those third parties' sale of the Infringing Work.

26. Additionally, Defendant Samhain represented to third parties, such as Amazon, that it had the right to license the Infringing Work when it knew or should have known that the Infringing Work contained unauthorized copyrightable expression from the Original Work.

27. By unlawfully licensing the Infringing Work to third parties such as Amazon, Defendant Samhain knowingly induced and caused (and continues to induce and cause) such third

parties to unlawfully reproduce and distribute the Infringing Work and has received royalties from these third parties' sale of the Infringing Work.

28. The foregoing conduct constitutes contributory infringement of Plaintiff's copyright and exclusive rights under the copyright in violation of 17 U.S.C. §§ 106 and 501.

29. The foregoing acts of infringement by Defendant Dimon and Defendant Samhain have been willful, purposeful, in disregard of, and indifferent to the rights of Plaintiff.

30. As a direct and proximate result of the foregoing contributory infringement, Plaintiff has suffered damages, including loss profits and is entitled to actual damages and/or Defendants' profits pursuant to 17 U.S.C. § 504(b) for each act of contributory infringement.

31. The foregoing contributory infringement threatens to cause and is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot be fully compensated for or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting further infringements of Plaintiff's copyright and exclusive rights under copyright.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter Judgment and Award to Plaintiff:

(a) Defendants' profits and damages in such an amount to be found;

(b) A permanent injunction restraining and enjoining Defendants Dimon and Samhain and their employees, agents, servants, attorneys, customers, and all persons acting in concert with them from, (i) directly or indirectly infringing in any manner Plaintiff's copyright or any other exclusive right; (ii) causing, contributing to, enabling, facilitating, or participating in any way in the infringement of Plaintiff's copyright; and (iii) causing, parties to unlawfully reproduce and distribute the Infringing Work and has received royalties from these third parties' sale of the Infringing Work.

28. The foregoing conduct constitutes contributory infringement of Plaintiff's copyright and exclusive rights under the copyright in violation of 17 U.S.C. §§ 106 and 501.

29. The foregoing acts of infringement by Defendant Dimon and Defendant Samhain have been willful, purposeful, in disregard of, and indifferent to the rights of Plaintiff.

30. As a direct and proximate result of the foregoing contributory infringement, Plaintiff has suffered damages, including loss profits and is entitled to actual damages and/or Defendants' profits pursuant to 17 U.S.C. § 504(b) for each act of contributory infringement.

31. The foregoing contributory infringement threatens to cause and is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot be fully compensated for or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting further infringements of Plaintiff's copyright and exclusive rights under copyright.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter Judgment and Award to Plaintiff:

(a) Defendants' profits and damages in such an amount to be found;

(b) A permanent injunction restraining and enjoining Defendants Dimon and Samhain and their employees, agents, servants, attorneys, customers, and all persons acting in concert with them from, (i) directly or indirectly infringing in any manner Plaintiff's copyright or any other exclusive right; (ii) causing, contributing to, enabling, facilitating, or participating in any way in the infringement of Plaintiff's copyright; and (iii) causing, contributing to, enabling, facilitating, or participating in any way in the reproduction or distribution of any of Plaintiff's copyrights.

(c) Pre and post-judgment interest at the maximum amount permitted by law; and

(d) An award to Plaintiff of such other and further relief that this Court determines at law or in equity, including but not limited to Plaintiff's attorneys' fees and costs, that is just and proper.

COUNT III
(Vicarious Copyright Infringement)

32. Plaintiff repeats and realleges the allegations contained in paragraphs 1–31 as if set forth in full.

33. Defendant Dimon had and still has the ability to control and did control the conduct of Samhain Publishing by virtue of a restrictive licensing agreement.

34. Defendant Dimon received and continues to receive a direct financial benefit from Samhain's unlawful reproduction and distribution of the Infringing Work by virtue of a royalty established in a licensing agreement or by virtue of a profit-sharing ownership stake in the infringing party.

35. Defendant Dimon had and still has the ability to control and did control the conduct of Samhain by virtue of a restrictive licensing agreement.

36. Defendant Dimon received and continues to receive a direct financial benefit from Samhain's unlawful reproduction and distribution of the Infringing Work by virtue of a royalties stemming from the sale of the Infringing Work.

37. The foregoing acts of infringement by Defendants have been willful, purposeful, in disregard of, and indifferent to the rights of Plaintiff.

38. Defendants' conduct constitutes vicarious infringement of Plaintiff's copyright and Plaintiff's exclusive rights under the copyright in violation of 17 U.S.C. §§ 106 and 501.

39. As a direct and proximate result of the vicarious infringement by Defendants of Plaintiff's exclusive rights under copyright, Plaintiff is entitled to actual damages and Defendants' profits pursuant to 17 U.S.C. § 504(b) for each act of contributory infringement.

40. The conduct of Defendants threatens to cause and is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot be fully compensated for or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting further infringements of Plaintiff's copyright and exclusive rights under copyright.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter Judgment and Award to Plaintiff:

(a) Defendants' profits and damages in such an amount to be found;

(b) A permanent injunction restraining and enjoining Defendants Dimon and Samhain and their employees, agents, servants, attorneys, customers and all persons acting in concert with them from, (i) directly or indirectly infringing in any manner Plaintiff's copyright or any other exclusive right; (ii) causing, contributing to, enabling, facilitating, or participating in any way in the infringement of Plaintiff's copyright; and (iii) causing, contributing to, enabling, facilitating, or participating in any way in the reproduction or distribution of any of Plaintiff's copyrights.

(c) Pre and post-judgment interest at the maximum amount permitted by law; and

(d) An award to Plaintiff of such other and further relief that this Court determines at law or in equity, including but not limited to Plaintiff's attorneys' fees and costs, that is just and proper.

JURY DEMAND

Plaintiff respectfully demands a jury on all issue so triable herein.

Respectfully submitted,

Dated: February 14, 2017

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